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dered *res adjudicata* by a former judgment on the merits. *St. Louis K. C. & C. R. R. Co.* v. *Wabash R. Co.*, 152 Fed. 849; *Dowell* v. *Applegate*, 152 U. S. 327. But the defense of lack of jurisdiction is ordinarily not rendered *res adjudicata*. The judgment would be void. See 32 HARV. L. REV. 177. A decree, however, of a federal court lacking jurisdiction only because of no diversity of citizenship is not a mere nullity. *McCormick* v. *Sullivant*, 10 Wheat. (U. S.) 192; *Des Moines Nav. & R. Co.* v. *Iowa Homestead Co.*, 123 U. S. 552. The principal case would be correct even if such a decree were held void. On this assumption it would follow that if one of the parties fraudulently represented he was a citizen of another state, the judgment could be assailed collaterally. See 32 HARV. L. REV. 177. In the principal case, however, the parties actually were of diverse citizenship. The fraud related only to the actual ownership of the bonds. Furthermore, the case can be decided on a still shorter ground. There was a series of judgments. Even if the first judgment was void for want of jurisdiction, its owner, Y, was a nonresident and could give the federal courts jurisdiction to render a second judgment.

LEGACIES AND DEVISES — EXECUTORY DEVISES CONDITIONED ON FAILURE TO ALIENATE A FEE. — Testatrix devised property to A in fee with a gift over to B of all that remained at A's death. A predeceased the testatrix. *Held*, B is entitled to the property. *In Re Dunstan*, [1918] 2 Ch. 304.

Where an absolute devise or bequest of realty or personalty is made, a limitation on the gift is void. After an absolute interest nothing remains to be given — the limitation is repugnant. *Van Horne* v. *Campbell*, 100 N. Y. 287, 3 N. E. 316; *Burton* v. *Gagnon*, 180 Ill. 345, 54 N. E. 279. This is a doubtful rule, for the argument of repugnancy is meaningless. Furthermore a limitation over on a virtually absolute estate is valid where said estate is a life interest with a power of alienation. *Komp* v. *Thomas*, 81 N. J. Eq. 103, 85 Atl. 815; *Harlow* v. *Bailey*, 189 Mass. 208, 75 N. E. 259. So the court in the principal case properly rejected the repugnancy doctrine where it had the loophole that the first donee predeceased the testatrix — a view having judicial support. *Norris* v. *Beyea*, 13 N. Y. 273. See 2 REDFIELD, WILLS, § 278. This is manifestly a departure from the rule first alluded to and one that is plainly justifiable and ought to be extended to the case where the first donee does not predecease the testator or testatrix.

POWERS — EXECUTION OF POWER OF APPOINTMENT BY GENERAL DEVISE OR BEQUEST. — The testatrix in her will bequeathed "all my shares in the Halifax New Market Consolidated Stock Co." to a certain legatee and devised and bequeathed "all my real estate and all the residue of my personal property including any property over which I may have at the time of my death an absolute power of appointment to my trustees" upon certain trusts. The testatrix owned in her own name only part of the designated stock and possessed a general power of appointment over the remainder. *Held*, that the specific legatee is entitled to the stock covered by the power as against the residuary legatees. *Re Doherty-Waterhouse*, 119 L. T. R. 298 (1918).

At common law a general devise or bequest did not operate as the execution of a power of appointment unless such intention was in some way expressed in the will. *Hughes* v. *Turner*, 3 M. & K. 666; *Bennett* v. *Aburrow*, 8 Ves. Jr. 609; *Hollister* v. *Shaw*, 46 Conn. 248; *Patterson* v. *Wilson*, 64 Md. 193, 1 Atl. 68. A devise of realty which could not take effect except upon property comprised in the power, was a sufficient indication of intention to exercise the power. *Standen* v. *Standen*, 2 Ves. Jr. 589; *Stevens* v. *Bagwell*, 15 Ves. Jr. 139; *Keefer* v.

Schwartz, 47 Pa. 503. But with personalty, the court could not look beyond the will and no examination into the circumstances of the testator's property was permitted. *Nannock* v. *Horton*, 7 Ves. Jr. 391; *Jones* v. *Tucker*, 2 Mer. 533. *Contra*, *White* v. *Hicks*, 33 N. Y. 383. However, the Wills Act and similar legislation in this country reversed the common-law presumption, and today a testamentary gift described generally operates as an exercise of a power unless the contrary intention is shown. 7 WM. IV & 1 VICT., c. 26, § 27; 1 N. Y. REV. STAT. 737, chap. 126, KY. GEN. STAT. 1888, chap. 113, § 22. Some jurisdictions have reached the same result without the aid of a statute. *Amory* v. *Meredith*, 7 Allen (Mass.) 397; *Emery* v. *Haven*, 67 N. H. 503, 35 Atl. 940. Limited powers, however, remain unaffected by the statutes and as to them the common law still applies. *Re Huddleston*, [1894] 3 Ch. 595; *Re Wilkinson*, [1910] 2 Ch. 216; *Re Glassington*, [1906] 2 Ch. 305. The principal case is clearly within the provision of the Wills Act and presents solely the question whether there was a contrary intention expressed in the residuary clause sufficient to rebut the presumption that the bequest of the stock was meant as an execution of the power. The court in deciding the question in the negative seems to have reached the correct result.

PRINCIPAL AND SURETY — JOINT AND SEVERAL CONTINUING GUARANTEE — NOTICE TO CREDITOR OF DEATH OF GUARANTOR — DISCHARGE OF GUARANTOR. — In consideration of C's agreeing or continuing to deal with P, the undersigned, G and five others, jointly and severally guaranteed payment of P's liabilities to C, present and future, and agreed that it should be a continuing guarantee until the undersigned or the executors or administrators of the undersigned should give notice not to make further advances. C was not bound to extend credit. G died and his executor gave notice purporting to terminate the liability of the estate under the guarantee. Subsequent to this further advances were made to P. *Held*, that the estate of G is liable until each and all of them, or their respective executors or administrators should give notice of termination. *Egbert* v. *National Crown Bank*, L. R., [1918] A. C. 903.

A mere guarantee of advances, no present consideration being given, is but an offer for successive unilateral contracts which the death of the offeror *ipso facto* terminates. *Aiken* v. *Lang's Adm'r*, 106 Ky. 652, 51 S. W. 154; *Hyland* v. *Habich*, 150 Mass. 112, 22 N. E. 765. But where a contract has been made, death does not terminate it. *Kernochen* v. *Murray*, 111 N. Y. 306, 18 N. E. 868; *Lloyds* v. *Harper*, L. R. 16 Ch. D. 290. See 13 HARV. L. REV. 216. Losing sight of this fundamental distinction seems to have led to confusion. Thus, mere guarantees have been called contracts terminable upon notice of death either by reading such a limitation into the contract or by holding the consideration divisible. *Dodd* v. *Whalen*, [1897] 1 Ir. 575; *Ascherson* v. *Tredegar Dry Dock and Wharf Co.*, [1909] 2 Ch. 401; *Valentine* v. *Donohoe-Kelly Banking Co.*, 133 Cal. 191, 65 Pac. 381. Where the guarantee is under seal, as an offer is merely intended, the seal, in this country, will not prevent its termination by the death of the guarantor. *Jordon* v. *Dobbins*, 122 Mass. 168. But some courts will require notice to the creditor. *Gay* v. *Ward*, 67 Conn. 147, 34 Atl. 1025; *National Eagle Bank* v. *Hunt*, 16 R. I. 148, 13 Atl. 115. Where, however, there is a binding contract for a definite time the only possible remedy would seem to be on equitable grounds; equity will prevent a forfeiture, unnecessary damages must be avoided. See 30 HARV. L. REV. 494. In the principal case a contract was apparently intended, but the consideration being illusory a mere offer resulted, which was *ipso facto* terminated by the guarantor's death. But assuming a valid contract, the doctrine of *Dodd* v. *Whalen* is inapplicable, as here notice by the guarantors or their executors is provided for. Accord-